

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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NORTHMOBILETECH LLC,

Plaintiff,

v.

SIMON PROPERTY GROUP, INC.,

and

SIMON PROPERTY GROUP, LLP,

Defendants.

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ORDER

11-cv-287-wmc

Having settled its related lawsuit in this district, NorthMobileTech LLC has filed a Notice of Covenant Not To Sue and Resulting Lack of Jurisdiction seeking to end what remains of this case after the court's summary judgment decision. (Dkt. #282.) The settlement and dismissal of the other suit obviously undermines one of defendants' principal arguments for a trial to proceed on their counterclaim for invalidity. *See* Dkt. #269, fn. 9 (interests of judicial economy served by deciding invalidity in light of related lawsuit on the '130 patent.) Indeed, proceeding on invalidity where the court has already decided that there is no infringement would appear to serve little purpose if there is no prospect of another suit between the parties. Driving home this latter point, plaintiff, on behalf of itself and any successors-in-interest to the '130 patent, offers to release and unconditionally covenant not to sue defendants or any of their subsidiaries or divisions for infringement of the '130 patent "provided that the court agrees that it lacks jurisdiction to determine invalidity." (Dkt. #282, p. 1.)

Since plaintiff's covenant not to sue extinguishes any current or future case or controversy between the parties, there would appear no "substantial controversy, between the parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *MedImmune, Inc. v. Genetech, Inc.*, 549 U.S. 118, 127 (2007). Accordingly, the court will enter an order dismissing this case for lack of jurisdiction unless defendants' file and serve a response to plaintiff's notice of covenant not to sue by noon Friday, August 10, 2012, setting forth a live case or controversy between the parties over which this court may and should exercise jurisdiction.

#### ORDER

IT IS ORDERED that this case is DISMISSED for lack of jurisdiction provided plaintiff NorthMobileTech LLC releases and unconditionally covenants not to sue defendants or any of their subsidiaries or divisions for infringement of the '130 patent, unless defendants file and serve a response as detailed above.

Entered this 7th day of August, 2012.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge